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Ombudsman Investigates Excessive Force Complaint

January 10, 2022 Juneau, Alaska — Ombudsman Kate Burkhart has released a public summary of the investigation of a complaint that correctional officers used excessive force on three inmates at Anchorage Correctional Complex (ACC). On November 22, 2017, an inmate contacted the Ombudsman to report that he had been inappropriately sprayed with oleoresin capsicum (OC) by a group of correctional officers. The incident allegedly occurred that morning, after the Complainant and two other inmates were transported in a van from ACC West to ACC East.

The Complainant alleged that the officers sprayed him and the other inmates with OC while they were seated in the van, and then closed them in the van for about 10-15 minutes. The Complainant alleged that he was not offered any materials to decontaminate (to wash the OC off his skin), nor was he offered an opportunity to shower and change clothes. At the time he contacted the Ombudsman, the Complainant reported he was still wearing the same clothing.

The Complainant later alleged that he had filed a grievance with the Department of Corrections (DOC) about the incident, but DOC's responses were evasive or non-responsive. The grievance investigation deferred to the findings of a separate administrative investigation conducted by the DOC Professional Conduct Unit (PCU), which was not shared with the Complainant.

The Ombudsman investigated five allegations based on the inmate's complaint and concluded they were justified based on a preponderance of the evidence:

- 1. DOC staff used excessive force by pepper spraying three inmates in a transport van and leaving the inmates in the van for several minutes without proper ventilation.** The Ombudsman found that the use of OC spray was not reasonably necessary or appropriate to maintain order and was therefore an excessive use of force, which is contrary to law.
- 2. DOC staff did not allow the three inmates to properly decontaminate following exposure to oleoresin capsicum spray.** While the two inmates who were indirectly hit by the OC were temporarily placed in the segregation shower, ACC staff unreasonably denied them the means to decontaminate themselves. The Ombudsman found that the third inmate was provided the means and opportunity to decontaminate more than an hour after the use of force, which was not within the time required by agency policy.
- 3. DOC staff did not follow DOC policy on use of active force.** The Ombudsman found that the officers did not follow the policy in either the use of force or the documentation afterward.
- 4. DOC's employee misconduct investigation and disciplinary process was ineffective in holding its staff accountable.** While both the DOC PCU and Human Resources investigated

the incident, the Ombudsman found that these processes did not result in meaningful accountability for all of the officers involved in the incident.

5. **DOC's Professional Conduct Unit's practice of keeping the results of its investigation confidential failed to achieve the Unit's commitment to transparency.** When the PCU was active, its stated mission was "to demonstrate commitment to transparency and self-examination" to improve DOC operations. The PCU conducted a thorough investigation of the November 22, 2017 incident. However, no information from the PCU's investigation could be shared with the inmates who were directly affected by the officers' actions because PCU investigation reports were considered confidential under DOC policy. The Ombudsman concluded that, while it would have been inappropriate for the PCU to provide a full account of its investigation and findings to the inmates, nothing precluded the PCU from providing notice that it had concluded its investigation and whether the complaints were substantiated or not.

DOC partially objected to the finding for Allegation 3, but did not dispute the Ombudsman's other investigative findings.

During consultations with the Ombudsman in 2018 and 2019, DOC stated that the agency was updating its use of force policy. That update has not yet been completed, so the Ombudsman made her recommendations public as permitted by AS 24.55.200.

The Ombudsman made 11 recommendations to DOC. These included the recommendation to establish an agency-wide use of force policy which includes specific provisions governing the use of OC spray and other chemical agents and decontamination afterward. The Ombudsman recommended that DOC ensure that all inmates exposed to OC spray are offered a medical exam, and that medical staff clearly document those exams. Other recommendations were to clarify how use of force incidents should be documented and how the agency should review incidents for compliance. The Ombudsman renewed [the 2017 recommendation that DOC use body cameras to document interactions between officers and inmates](#), and made a new recommendation that DOC install audio and video recording in transport vans.

DOC accepted the first recommendation, noting that the agency is currently working on revising its use of force policy. DOC did not respond to the remaining 10 recommendations. The Ombudsman closed this investigation as **justified** and **partially rectified** based on DOC's concurrence with most of the Ombudsman's investigation findings, acceptance of Recommendation 1, and implicit acceptance of Recommendations 2 through 11.

The public report of the investigation is available at www.ombud.alaska.gov.

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